# VIRGINIA LAW REVIEW

Published Monthly, During the Academic Year, by University of Virginia Law Students

**Subscription Price, $3.50 per Annum - - 50c per Number**



LIABILITY OF A CORPORATION TO THIRD PARTIES FOR ACTS OF PROMOTERS BEFORE INCORPORATION.—A recent Indiana case has held that a corporation is liable to third persons for the fraud or misrepresentations of its promoters made to such third persons.[1] This liability is enforced where the corporation is in substance composed of the promoters themselves,—in essence nothing more than an instance of looking behind the corporate veil.

The facts in the Indiana case were as follows: One Meneely, the owner of a farm, gave an option for the purchase of the mineral rights thereon to two men. These men represented to the defendant that they were the owners of the rights in question. Relying on this, the defendant leased the mineral rights from these men on a regular mining lease, containing the usual stipulation that unless coal was mined in one year the lease was to be void. While the defendant developed the property in accordance with the conditions of the lease, these two men together with a dummy, incorporated themselves as the "Burnett Coal Mining Company", and assigned their option to the corporation. The corporation thereupon purchased the mineral rights, and awaited the results of the

[1] Burnett Coal Mining Co. *v.* Schrepferman (Ind.), 133 N. E. 34 (1921).

defendant's operations. After the defendant had found good coal, built a railroad and generally developed the property, the corporation brought this suit for an injunction to restrain him from further mining coal. The injunction was rightly refused on the ground that the corporation was estopped to deny the validity of the lease made by substantially the same persons who composed it.[2]

This case was but the further development of the case of *Glendenning* v. *The Superior Oil Co.*[3] There Glendenning held a certificate of purchase at a sheriff's sale of oil properties. These properties he purported to sell to the Superior Oil Company. Afterwards, Glendenning demanded and received from the sheriff a deed to the property. He then brought an action against the Oil Company for waste and an accounting of mesne profits. The action was dismissed on the ground that Glendenning was estopped to deny the validity of his grant. The Indiana case seems to have been an attempt to avoid the doctrine of the Glendenning Case by incorporation. But, as we have seen, the Court did not allow two men to enforce as a corporation rights that they could not enforce as individuals. Certainly in both cases substantial justice was administered.

The authorities in point in cases of this nature are rather few, although almost every case dealing with promoters throws out *dicta* that would seem to exempt the corporations from liability to or on behalf of promoters or incorporators. And from the few authorities that are in point it is difficult to deduct any general rule except the very vague statement that the courts will regard the individuals and the corporation as one and the same when to do otherwise would be to work injustice or aid in a fraud. Each case is apparently decided on its own merits; and it is noteworthy that rarely are authorities cited except to sustain some well established legal proposition. This fact of individuality makes it difficult to classify the cases into types with any degree of exactitude; nevertheless, the following classification is submitted:

*First,* the acts of the individuals will be held to bind the corporation where the corporation has derived the benefits with knowledge of the terms of the contract. In fact, this amounts almost to an *adoption* of the act or contract of the promoters by the corporation, the liability of which may be really based on the fact that an adoption of the contract may be implied.[4] In one case which held the corporation not liable the decision really turned on

[2] Burnett Coal Mining Co. *v.* Schrepferman, *supra.* N. B. This case is digested under the Key-No. "ESTOPPEL, sec. 98 (1)", but it would seem better to have put it under "CORPORATIONS, sec. 448 (1)" where the authorities in point are collected. There is practically nothing in point under "ESTOPPEL, sec. 98 (1)".

[3] 162 Ind. 642, 70 N. E. 976 (1904).

[4] Mantle *v.* Jack Waite Mining Co., 24 Idaho 613, 135 Pac. 854 (1913); Wallace *v.* Eclipse Pocahontas Coal Co., 83 W. Va. 321, 98 S. E. 293 (1919). See also, Old Dominion, etc., Co. *v.* Lewisohn, 210 U. S. 206 (1908).

the question whether the contract in suit was or was not *ultra vires* and could be adopted.[5]

*Second,* where a contract was made between two parties and one party subsequently incorporated, but the unincorporated party to the contract continued to carry out his agreement to the satisfaction of the other, the contract will be enforced. This, like the above, is almost an adoption of the contract by the corporation, with the acquiescence of the other party.[6]

*Third,* where a partnership incorporates under the same name and continues to do the same business, *it would seem* that the corporation would be liable for the debts,[7] etc., of the partnership, unless by the incorporation third parties were admitted and there was no fraud.[8]

*Fourth,* where the corporation takes property from the incorporators with knowledge of an existing equity, or under such circumstances that knowledge must be imputed to it, the corporation is bound by that equity, and can not claim to be a *bona fide* holder for value.[9]

*Fifth,* an attempt on the part of individuals to enforce as a corporation a right which, as individuals, they would be estopped to enforce, will not be permitted.[10]

In considering the above question, there have been excluded all those cases dealing with the liability of a corporation to its promoters for services or for expenditures necessary for incorporation, as well as those cases on the fiduciary relationship that the promoters are sometimes said to bear to the corporation. These are wholly separate and distinct topics not coming within the purview of this note.

B. C.

---

CONFESSIONS OBTAINED BY DURESS OR ARTIFICE.—The rules of evidence regarding the admissibility of confessions which are obtained by duress or artifice are well settled. Those statements forced from an unwilling accused are inadmissible,[1] while those which he is induced by trickery to make are admitted.[2] It is only in the application of these rules that any serious questions have arisen.

---

[5] Kirkup *v.* Anaconda Amusement Co. (Mont.), 197 Pac. 1005 (1921).
[6] Bane *v.* Dow, 80 Wash. 631, 142 Pac. 23 (1914).
[7] Du Vivier and Co. *v.* Gallice, 149 Fed. 118 (1906).
[8] Culberson *v.* Alabama Construction Co., 127 Ga. 599, 56 S. E. 765, 9 L. R. A. (N. S.) 507, 9 Ann. Cas. 507 (1907).
[9] Carter *v.* Gray, 79 Ark. 273, 96 S. W. 377 (1906); Burnett Coal Mining Co. *v.* Schrepferman, *supra.*
[10] Philadelphia Creamery Supply Co. *v.* Davis and Rankin Co., 77 Fed. 879 (1896); Burnett Coal Mining Co. *v.* Schrepferman, *supra.*
[1] Ammons *v.* State, 80 Miss. 592, 32 So. 9 (1902); 1 GREENLEAF, EVIDENCE, (13th ed.), § 219; 1 WIGMORE, EVIDENCE, § 821, *et seq.*
[2] People *v.* Utter (Mich.), 185 N. W. 830 (1921); 1 WIGMORE, EVIDENCE, § 841.